

REMARKS

Claims 1-16 remain in this application. Reconsideration of this application in light of the following remarks is respectfully requested.

Rejections Under 35 U.S.C. §103

Independent Claim 1:

Claim 1 recites:

1. A method for preventing denial of service attacks over a data network including a plurality of traffic flows each formed by a plurality of data packets, the method comprising:
scanning the contents of the data packets;
verifying that the data packets conform to a set of predetermined requirements;
checking if the data packet is associated with a validated traffic flow; and
placing the data packet in a higher priority quality of service if the data packet is associated with a validated traffic flow and to a low priority quality of service if it is not associated with a validated traffic flow.

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,598,034 to Kloth (hereinafter Kloth) in view of U.S. Patent No. 6,636,512 to Lorrain (hereinafter Lorrain). Applicant respectfully traverses this rejection.

With regard to this rejection, the Examiner states the following:

Kloth does not explicitly teach placing the data packet in a higher priority quality of service if the data packet is associated with a validate traffic flow; and to a low priority quality of service if it is not associated with a validate traffic flow. However, Lorrain discloses reserving bandwidth for higher priority quality of service if the data packet is associated with a *Real Time (RT) traffic (interpreted as "validated traffic" by the office)* and serving the packet that is associated with *Non Real Time (NRT) traffic (interpreted by the office as "non validated traffic")* with lower quality of service, after the all higher priority traffic has been served. (column 2, lines 20-37). Accordingly, It would have been obvious to one having ordinary skill in the art at the invention was made to combine the Kloth's assignment of different Quality of service as per teachings of Lorrain's in order to prevent denial of service by placing the data packet in a higher priority quality of service if the data packet is associated with a Real Time or validated traffic flow and to a low priority quality of service if it is not associated with a Real Time traffic flow (validated traffic flow).
Office Action dated 3/10/2005, page 3. (*emphasis added*)

Applicants respectfully disagree for the reasons set forth below.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP 2111 Claim Interpretation; Broadest Reasonable Interpretation

CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given the broadest reasonable interpretation *consistent with the specification*...The broadest reasonable *interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach*..." (in part; *emphasis added*)

MPEP 2111.01 Plain Meaning (in part):

"PLAIN MEANING" REFERS TO THE MEANING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART

When not defined by applicant in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art.

In this particular case, Kloth and Lorrain do not teach or suggest all the limitations of independent claim 1 and are thus insufficient to obviate the subject claim.

Additionally, Applicants respectfully submit that the Examiner's interpretation of validated traffic as Real Time traffic, and the Examiner's interpretation of traffic that is not validated traffic as Non Real Time traffic is outside the broadest reasonable interpretation of the claim term "validated." Such an interpretation is not reasonable in view of the meaning held by those skilled in the art nor in view of Applicants' disclosure.

As is well know, "real time" is used to describe data or applications that are time or latency sensitive. For example, streaming video applications may be described as real-time because

excessive delays in delivery of video data may result in undesirable playback of the video data. As an example, the American Heritage Dictionary (4th edition, 2000) defines real-time as the following:

real-time: Of or relating to computer systems that update information at the same rate as they receive data, enabling them to direct or control a process such as an automatic pilot.

Furthermore, validated traffic (as well as non-validated traffic) may comprise real-time or non-real time traffic, and thus the interpretation of validated traffic as real-time is clearly in error. Accordingly, the interpretation of validated traffic as "real-time" traffic, and data that is not validated as "non real time" traffic is in error. As such, the description provided by Lorrain for reserving higher priority quality of service for real time traffic provides for none of the deficiencies of Kloth. Consequently, Kloth and Lorrain fail to provide a *prima facie* case of obviousness as neither Kloth or Lorrain provide a method for placing a data packet in a "higher priority quality of service if the data packet is associated with a validated traffic flow" and for placing the data packet in a "low priority quality of service if it is not associated with a validated traffic flow" as described in the subject application and recited in claim 1.

For the foregoing reasons, Applicants submit that claim 1 is patentable over Kloth in view of Lorrain, and such a notice is respectfully requested.

Independent claims 7 and 12 recite similar features as claim 1 and were rejected for the same rationale as claim 1. Therefore, the same distinctions between Kloth and Lorrain and the claimed invention in claim 1 apply for claims 7 and 12. For the reasons described above, Kloth and Lorrain do not render the claims *prima facie obvious*. Hence, Kloth and Lorrain fail to obviate the present invention as recited in claims 7 and 12.

Moreover, if an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Claims 2-6 depend from claim 1, claims 8-11 depend from claim 7, and claims 13-16 depend from claim 12, and thus the same distinctions between Kloth and Lorrain and the claimed invention in independent claims 1, 7, and 12 apply for these claims. Applicants respectfully submit that claims 2-6, 8-11, and 13-16 are also allowable, at least by virtue of their dependence on an allowable base

Application No. 09/598,631

Attorney Docket No. 32849.16/ NR-2
Customer No. 27683

claim. Consequently, it is respectfully urged that the rejection of claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable by Kloth in view of Lorrain have been overcome, and such a notice is respectfully requested.

Application No. 09/598,631

Attorney Docket No. 32849.16/ NR-2
Customer No. 27683

Conclusion

It is clear from the foregoing that claims 1-16 are in condition for allowance. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,



Steven T. McDonald
Registration No. 45,999

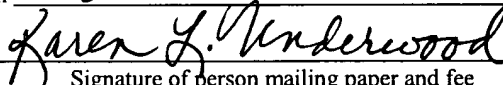
Dated: 10 May 2005

HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972/739-8644
Facsimile: 214/200-0853
Client Matter No.: 32849.16

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail in
an envelope addressed to the Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450

on

5-10-05



Signature of person mailing paper and fee